GOVERNMENT OF MYSORE

Food, Civil Supplies and Labour Department

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Visalam Chit Fund Ltd., 43, Viswanatha Road, Madhavanagar, Bangalore.

Award of the Labour Court, Bangalore—Published.

Read the following papers:

(1) Letter No. 793/72-73, dated 27th September 1972 from Sri P. Srinivasacharya, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.
Dated this 27th day of September 1972

Present:

Sri P. Srinivasacharya, B.A., LL.B. .. Presiding Officer.

Reference No. 3 of 1970

I Party—
Workmen represented by the General Secretary, Bangalore General Labour Union, Subedar Chatram Road, Bangalore-9.

Vs.

II Party—
The Management of Sree Visalam Chit Fund Ltd., 43, Viswanatha Rao Road, Madhavanagar, Bangalore-1.

Reference:

Government Order No. FCL 561 LLD 69, dated 12th January 1970

AWARD

1. The Government of Mysore in their Order No. FCL 561 LLD 69 dated 12th January 1970 have referred by industrial dispute

existing between the above named parties to this court for adjudication on the points of dispute noted below :—

> "Whether the Management of Sree Visalam Chit Fund Ltd., 43, Viswanatha Rao Road, Madhavanagar, Bangalore-1, is justified in dismissing Sri N. Nagarajan from services? If not, whether the said workman is entitled for reinstatement with back wages, continuity of service and consequential benefits or to any other relief?"

2. On behalf of the first party claim statement is filed as follows :—The second party is a prosperous chit fund company. The first party workman (hereinafter referred to as workman) joined the second party as an accountant on 12th June 1965 as an accountant on a monthly salary of Rs. 150. He was confirmed as Branch Office-in-charge with effect from 1st September 1965. Thereafter, he was promoted as Branch Manager. Even though he was called Manager he was doing the work of an accountant, canvassing, developing the work, enrolling more and more new subscribers. The second party was adopting unfair labour practices such as obtaining signatures of employees for Rs. 50 as D.A. but paying only Rs. 5, the management was obtaining signatures of workers as though paying bonus of 8 months wages, but in fact they were paying only bonus of 4 months wages. All these things were done and adopted as per the instructions and directions of the Managing Director of the second party. Thus there was unaccounted monies. The workman was also paid 10 per cent of such unaccounted monies. The workman appraised all these unfair practices and requested the Managing Director to stop such things. On account of this among other reasons the Managing Director began to nurse ill will against the workman and ultimately on 28th May 1968 served a transfer order on the workman and took back the charge from him However he was not transferred. On 18th June 1968 the workmen was threatened with dire and serious consequences and harassed and brain washed him and made him desperate and ultimately as per the instructions of the Managing Director drafted a letter and they forced Sri Nagarajan to write that letter in his own handwriting wherein false confessions were obtained. On 21st July 1968 the Managing Director served a memo on the workman alleging baseless charges of misappropriation and demoted the workman and made him the development assistant. No enquiry was conducted and no opportunity was given to the workman before thus demoting him. Even after these things the second party went on harassing the workman and other employees. On account of these unfair practices the workman and other employees joined the Bangalore General Labour Union in the month of November 1968. On 15th February 1969 without

conducting any enquiry and without giving him any opportunity the second party terminated the services of the workman. All the other employees who had joined the union were removed from service on flimsy grounds. Thus the management victimised the workman and other workmen. The conciliation proceedings ended in failure. Hence the reference. The termination of the workman was not justified as no enquiry was conducted, a confession letter was taken by force, the workman was victimised as he joined the union, it is mala fide and is against the principles of natural justice. He is entitled to be reinstated with back wages and continuity of service.

3. On behalf of the second party rejoinder is filed as follows :— The workman was appointed in the establishment of the second party with effect from 26th May 1965 and was subsequently employed as Manager at Bangalore. By Order, dated 28th May 1968 he was ordered to be transfered to Pallathur and he was asked to hand over charge to Sri V. Swaminathan. During the course of such handing over, serious irregularities including misappropriation of company's funds on the part of the workman were found out. Sri Nagarajan admitted his guilt and gave a letter dated 18th June 1968 requesting time to clear off all transactions and requesting that he may be permitted to attend office till such time his charge was completely taken over from him. In view of the developments that had taken place the Management informed the workman by letter dated 21st July 1968 that his transfer order was temporarily withheld pending decision of his future career in the establishment. He was directed to work at Bangalore Office as a Development Officer on his present basic salary of Rs. 260 p.m. plus D.A. of Rs. 50. Sri Nagarajan accepted the above order and continued to serve the establishment as Development Officer. On further investigation the Management was compelled to finally remove him from service with effect from 15th February 1969. No doubt at the time of his termination the workman had ceased to be a Manager but was working as a Development Officer. This post was also mainly administrative in nature and therefore he is not a "workman" as defined in Section 2 (s) of the Industrial Disputes Act. The Order of Reference is therefore bad in law and this court has no jurisdiction to entertain this dispute. It is true that no enquiry was held. But the Management will lead evidence to prove the charges against the workman. A police complaint has been filed against him for misappropriation and a civil suit has been filed for the recovery of the monies misappropriated by him. Another case of temporary misappropriation of the funds was found during investigation. The inference is that the workman misappropriated the amount in this instance during the intervening period. The second party submits that it was fully justified in removing the worman from service and there are no circumstances warranting interference with the orders of removal. It is submitted the workman is not entitled for reinstatement or any other relief.

4. On these pleadings the following issues have been framed :—

(1) Whether II Party is justified in terminating the services of I Party workman ?

(2) Whether the termination is due to an act of victimisation ?

(3) Whether I Party workman as an administrative officer was mainly doing work which was administrative in nature and therefore is he not a workman under Section 2 (s) of the Industrial Disputes Act and therefore is this reference bad in law and this court has no jurisdiction ?

(4) Whether I Party workman is entitled to reinstatement with back wages ?

(5) To what relief, if any, is I Party workman entitled to ?

5. I shall first take up issue No. 3 for consideration. A contention has been taken in the rejoinder statement that the workman at the time of his termination was working as a Development Officer and was discharging functions mainly of an administrative nature and therefore he is not a workman under the Industrial Disputes Act and consequently the reference is bad and this court has no jurisdiction. But no evidence has been let in by the second party worth the name in substantiation of this contention. During the course of evidence only a half hearted attempt was made to show what work the workman was doing when he was in service of the second party. This issue was also not pressed and no arguments were addressed on this point. It is also seen that after the workman was asked to work as Development assistant there was a Manager above him. In these circumstances I hold that Sri Nagaraj was a workman within the meaning of Section 2 (s) of the Industrial Disputes Act and this court has jurisdiction to adjudicate upon the dispute.

6. The next question for consideration is whether the second party was justified in terminating the services of the workman. The allegation against the workman is that he is guilty of several acts of commission and omission amounting to misappropriation of the funds of the second party. M.W. 1 who is the present Manager in the Bangalore Branch of the second party states that in about May 1968 the Management was suspicious about the workman and therefore he was transferred to Pallathur as per Ex. M. 7 and he was posted in his place. In the course of taking charge it was brought to light that certain sums had been misappropriated. He reported the matter to

Head Office through phone. Te could not take complete charge. The transfer order was kept in abeyance. The workman gave an application to the Managing Director as per Ex. M. 8. Thereafter II Party made an order as per Ex. M. 9 detaining him at Bangalore as Development Officer. He did not clear off all the transactions as stated in Ex. M. 8. Thereafter his services were terminated as per Ex. M. 10. Two loan transactions and one payment regarding prize payment were found to be not genuine. One borrower is noted as Mangalamba wife of M. S. Doraiswamy, Principal, Associated Institute of Commerce, Avenue Road, Bangalore. The other borrower is noted as M. Basavarajappa, Partner, in Girija Medical Stores. One Shambu Rao, Proprietor, Hotel Raja Prakash is noted as Chit prize winner. Witness enquired all the above said three parties. In respect of the two loan transactions there are no documents such as loan applications, pronotes and payment vouchers. In respect of the chit prize amount it was noticed that the said Shambu Rao was signing only in Kannada, but in the documents found in the custody of the II Party the signature had been put in English. Hence witness became suspicious and made enquiries. All the three person stated that they did not have transactions as stated in the documents stated to be theirs. After the workman was removed from service he addressed letters to each of the three above said persons as per Exs. M. 11, 12 and 13. Ex. M. 14 is the reply received from Basavarajappa. Ex. M. 15 is the payment register. Ex. M. 15 (a) is the relevant entry to show Rs. 3000 as paid to Mangalambal. Ex. M. 16 is the loan ledger Ex. M. 16 (a) is the corresponding entry. Ex. M. 17 is the diary relating to 19th February 1968. In it the loan amounts advanced is noted as Rs. 5,000. The break figures are noted on the reverse of it. Ex. M. 17 (a) is the relevant entry relating to Mangalambal. This is shown as pending as per loan statement for February 1968 as per Ex. M. 18. Ex. M. 19 and 20 are similar statements for March 68 and April 68 respectively. All these statements are signed by the workman. The chit amount of Mangalambal was paid as per Ex. M. 21. Ex. M. 22 is the counter foil. This cheque is encashed. Since she had not taken loan as per Ex. M. 15 (a) the loan amount was not deducted. Ex. M. 23 is the other payment register. Ex. M. 23 (a) is the relevant entry to show that Rs. 4000 had been paid to Basavarajappa. This does not bear the initials of the workman. The first party workman sent a dairy as per Ex. M. 24. Ex. M. 24(a) is the relevant entry on the reverse of it. Ex. M. 25 is the running account of Pallathur office. This loan is still outstanding. The chit amount of Basavarajappa was paid as per Ex. M. 26. Ex. M. 27 is the corresponding counterfoil of the cheque. The cheque was encashed. Ex. M. 26 is prepared by the workman. In respect of the alleged loans in favour of Mangalamba and Basavarajappa a civil suit has been filed against the workman for recovery.

7. M. W. 2 is Smt. Mangalambal. She states that she was holding a chit in the chits conducted by II Party. Her husband was managing the chit transaction on her behalf. He used to get papers to her residence and she used to sign them. She does not know how to read and write English. Since she had not gone to the office of the chit fund at any time. She had not taken loan on the basis of her chit to her knowledge. She identified her signature on Ex. M. 12 which she signed at her house. She received the chit fund as per Ex. M. 21. Ex. M. 21 (a) is her signature. She has not put her signature for any loan documents.

8. M. W. 3 M. S. Doreswamy is the husband of M. W. 2. He states that he had a chit also in the second party. He was transacting the chit of his wife. That chit is closed. No loan was taken on the chit standing in the name of M. W. 2 while it was current. Only amount drawn was the prize amount. M.W. 1 questioned him about any loan taken and he replied that no loan was taken.

9. M. W. 4 is M. Basavarajappa. He states that he was holding a chit in the chit series run by II Party. That chit is closed. He had not taken loan on that chit. About two years ago M. W. 1 questioned him about any loan that he had taken. He denied. He received the original of Ex. M. 13 and he sent a reply as per Ex. M. 14. He received the chit amount as per Ex. M. 26. Ex. M. 27 is the counter foil of the cheque and Ex. M. 27 (a) is his signature.

10. M. W. 4 B. Shambu Rao stated that he was a chit holder. In one batch he had three chits. Ex. M. 37 is the application given by him. He has received the prize money in all the three chits as per Ex. M. 29 and 30. Ex. M. 29(c) is not his signature. He does not know English. He has not received the chit amount in respect of the chit number noted in Ex. M. 29(a). He has not received Rs. 900 as noted in Ex. M. 25(g). Ex. M. 36(a) is not his signature.

11. The version of the first party as stated in his evidence is that he did not prepare any bogus documents nor did he make any bogus entries in the registers. The two loan accounts of Basavarajappa and Mangalambal were sanctioned by the Managing Director. They were close friends of Management Directors. The loan payment entries of those two loans in loan ledger and payment register were made by the office assistant and the accountant. The monthly statements were prepared by the office assistant under the supervision of the Accountant. He was forwarding those statements blindly in good faith. If there are any irregularities in the statement of accounts he is not responsible. According to him the loan amounts given to Mangalambal and Basavarajappa were supported by vouchers and those vouchers are not forthcoming. But in his cross-examination he admits that all

the relevant documents bear his signatures. He admits that Ex. M. 28 (c) bears his signature. He admits that Ex. M. 35(d) is in his hand writing as also Ex. M. 36. According to him Ex. M. 35(d) is the signature of Shambu Rao which is in English. According to him all the documents were handed over to M.W. 1 by the Accountant in his presence. He says that blank vouchers would be taken for payment of money and if the party fails to pay the money suits would be filed after filling up the date. But he does not remember the names of any one of the chit holders from whom blank pronotes were taken. He admitted that all the signatures of Shambu Rao in the loan applications etc., are in Kannada. He admits that on the counterfoil of the cheque no signature has been obtained. There is no other evidence on behalf of the first party except his oral denial.

12. Above all Ex. M. 8 is the document which the workman wrote to the Managing Director on 18th June 1968. It is in his own hand writing. In the said letter it is stated that during the process of handing over charge of the Main and Chickpet Offices to Sri Swaminathan certain transactions amounting to misappropriation of funds has been found out and as he requires some more time to clear off all such transactions that has been found out now and that may be found out later on he has requested to permit him to attend the office till such time the charge is completely taken over from him.

13. It is now contended that the said letter Ex. M. 8 has been obtained by coersion and threat. In the claim statement the allegation made in this behalf is as follows :—

> " Both Sri Swaminathan, the Branch Manager and the Managing Director Sri A. R. Ramaswamy threatened Sri Nagarajan with dire and serious consequences and demanded a letter from him. When Sri N. Nagarajan delinced to give that letter both Sri Swaminathan and the Managing Director informed Sri N. Nagarajan that if the letter is not given, his entire future will be doomed. For hours together both the persons harassed and brain washed Sri N. Nagarajan and made him desparate and ultimately as per the instructions of the Managing Director Sri V. Swaminathan drafted a letter and both of them forced Sri Nagarajan to write that letter in his own hand writing wherein false confessions were obtained ".

In his evidence he states that the Managing Director by threat and coersion forced him to write out Ex. M. 8 as per Ex. W. 2 which was written by M. W. 1 as per his dictation. He does not say anything more. He does not say that both Swaminathan and Managing Director

harassed him for hours as stated in the claim statement. But in his cross-examination he says that he asked the Managing Director and M. W. 1 to furnish him the particulars of those misappropriations and they did not reply; M. W. 1 stated that Managing Director wanted such a letter and that he should give; he was told that Managing Director was there and that the workman should not worry. But for the assurance of M. W. 1 he would not have written Ex. M. 8. This is a clear contradictory statement to what has been said by him in his examination-in-chief and the claim statement. After his termination he has issued a lawyer's notice stating that his termination was unjustified etc. In the said notice he has not alleged that Ex. M. 8 was taken by force or under threat or coersion. In fact in his examination in chief he states that no misappropriations were discovered at the time of handing over charge. If that was the case it is not understandable as to why he would say in Ex. M. 8 that certain transactions amounting to misappropriation have been found out. It is only for the first time in the claim statement that a contention has been taken that Ex. M. 8 was obtained by force. In view of all the facts and circumstances I am not convinced that Ex. M. 8 has been taken from the workman under duress. It is in his hand writing and therein he has admitted that certain irregularities were discovered.

14. The evidence of M. Ws. 2 to 5 goes to show that they had not taken any loans from the second party but from the documents produced on behalf of the second party it is seen that loans are shown against their names. The relevant cheques, vouchers etc., are in the hand writing of the workman and he has put his signatures thereto. There is manipulation of accounts and falsification of documents. The workman who was the Manager of the branch office at Bangalore cannot escape the blame for the above irregularities and acts of commission.

15. It was contended on behalf of the workman that even if it were to be held that the workman was guilty of the allegations made against him, the second party had already either condoned him or had dealt with the same and therefore it was not open to the second party to terminate his service on the same allegations. In support of this argument he has relied upon the principles laid down in three decisions.

16. In A.I.R. 1926 Madras 57 the Madras High Court has laid down as under :—

> "When an offence has been condoned or dealt with and the offender retained in service, it is not open to the employer to subsequently dismiss him for that same offence but if the servant offends again it is perfectly justifiable for the

employer to consider the prior offences in determining in what manner he should be dealt with for the subsequent offence."

17. The decision reported in A.I.R. 1965 Jammu and Kashmir 91 relates to a Government servant. The Government servant concerned in that case had once been exonerated of some charges but he was proceeded against on the same charges once again. In the said decision it was held that the principles of **autrefois acquit** and **autrefois coyict** shoud be held applicable in departmental enquiries because it would be in consonance with the rules of justice. equity and good conscience. The High Court observed that the commission which was enquiring into the allegations will take all good care to see that the employee is not again hauled up for the same actions which were in substance the subject matter of charges previously against him.

18. In A.I.R. 1961 Mysore 181 the High Court of Mysore has laid down as follows :

> "Where a Municipality after an inquiry into the conduct of a municipal employee for having used a service stamp of one and half anna for private purposes punishes him by dismissal from service but he is again reinstated after depriving him of his salary for four and half months, it is outside the competence of the Municipality, when the matter was once closed to conduct another enquiry into the same charges, after about seven years and subject the employee to another penalty for the same act of misconduct for which he had already been punished."

19. From the principles laid down in the above decisions it is clear that if the employee had once been punished for some misconduct or if it had been condoned or had been dealt with the employee cannot again be punished for the same misconduct. The question for consideration is whether the workman in the present case had been punished once or whether his misconduct had been condoned or dealt with. It is seen that in Ex. M. 8 the workman has requested the second party to permit him to attend the offence till such time the charge is completely taken over from him. Ex. M. 9 is the reply sent by the second party to Ex. M. 8. Therein it is stated that the transactions had not yet been completely cleared off by the workman ; that in view of the developments that have taken place the transfer order of the workman is with-held pending decision of his future career with the second party ; he therefore asked to work as Development Officer on his present basic salary of Rs. 260 **plus** D.A. of Rs. 50. It is clarified

that conveyance allowance of Rs. 100 p.m. given to him is withdrawn in view of the change in his designation and in view of the fact that the purpose for which it has been paid does not exist now. The workman has worked in the second party branch at Bangalore under these terms till 15th February 1969 when his services were terminated.

20. It is contended that on behalf of the workman that the said change in his designation from Manager to that of Development Officer amounts to demotion in rank by way of punishment and therefore it should be taken that the second party had been with the misconduct of the workman previously. I am not impressed by this argument. From Ex. M. 9 it is seen that there is only a change in his designation. His basic salary and D.A. have not been reduced. Only the conveyance allowance given to him as Manager has been withdrawn on the ground that the purpose for which it was paid does not exist any more. It is to be remembered that the workman requested permission to attend the office till he regularised the transactions. It is further stated in Ex. M. 9 that his transfer to Pallathur was temporarily with-held pending decision of his future career with the second party. The letter of termination at Ex. M. 10 has been issued in continuating of Ex. M. 9. This contention of demotion has not been urged in his lawyer's notice referred to above. From these facts and circumstances I am of opinion that the misconduct of the workman had not been either dealt with or condoned when the workman was allowed to continue in service as a Development Officer. In the present case there was no domestic enquiry at the time of the alleged change in the designation as also when the termination order was issued. The workman has also not been punished once as is seen from Ex. M. 9 and M. 10 (ten). I am therefore of the opinion that the principles laid down in the decisions relied on by the workman are not applicable to the present case. No doubt the management of the second party could have terminated his services immediately the misconducts of the workman were discovered. But the more fact that they allowed him to continue in service for about 7 or 8 months in order to allow him to regularise the transactions and clear off the monies cannot mitigate the gravity of the misconducts committed by him while he was Manager. The second party's branch office handles many chits and it may have thought it prudent to continue him in service till he regularised the transactions. This lenience shown to him cannot now be turned against the management itself.

21. It is now well settled that the degree of proof required in a disciplinary matter is not the same as is required in a criminal court trying an offence. Where the act or conduct of the servant is prejudicial to the interests of the master or to the reputation of the master or where the act or conduct of a servant is inconsistent or incompatible with the due or peaceful discharge of his duty to his

master or where the act or conduct of a servant makes it unsafe for the employer to retain him in service or where the act or conduct of the servant is so grossly immoral that all reasonable men will say that the employee cannot be trusted would justify the termination of such a workman. I have already held above that the evidence let in on behalf of the second party both oral and documentary makes it clear that the workman's involvement in the misappropriations has been satisfactorily explained. On the other hand the workman's has not been able to prove that he had not committed any misappropriations. There is proof to show that the workman was involved in falsification of accounts. Taking all these facts and circumstances into consideration I hold that the second party was justified in terminating the services of the workman. This is my finding on issue No. 1.

22. The next issue for consideration is whether the termination of the services of the workman is due to an act of victimisation. The contention of the workman is that the second party was indulging in several shady transactions; that it was paying less D.A. but was taking signatures of workmen for more; that it victimised several employees; that the Managing Director was encouraging the workman to commit several things; that he did not like it and therefore requested the Managing Director to stop the same; the consequence is that he has been victimised.

23. In the course of his evidence he speaks to several transactions he did at the instructions of the Managing Director such as obtaining blank pronotes, forging tenders, sending black money to the Managing Director, etc. The same have been denied by the second party. It is to be seen that in the present case the workmen admits that he was also getting 10 per cent out of the illegal gains. It should not be lost sight of that when he committed all these things he was oppupying the position of a Manager and he was in the confidence of the second party. In fact he was a party to such transations if they were true. It is only after his own acts of commission were brought to light that he has turned hostile to the second party. Further expect his own interested version no other corroborative evidence has been adduced in this behalf. It may be that the second party was indulging in some shady transactions, but that does not entitle him to commit the things which he has done. Perhaps seeing that the management is in a vulnerable position in some transactions he tried to feather his nest. I am therefore of the opinion that his termination was with a view to victimise him is not substantiated. I therefore answer issue No. 2 in the negative.

24. In view of my findings on issue Nos 1 to 3 it follows that the workman will not be entitled to any relief.

25. In the result I pass an award dismissing the order of reference with no order as to costs.

P. SRINIVASACHARYA,

Presiding Officer,
Labour Court, Bangalore.

"COPY"

P. SRINIVASACHARYA,

Presiding Officer,
Labour Court, Bangalore.

ORDER

Bangalore, dated 24th October 1972

S.O. 44.—Whereas by State Government Order No. FCL 561 LLD 69, dated the 12th January 1970, the Industrial Dispute between the Workmen and the Management of Visalam Chit Fund Ltd., 43, Viswanatha Road, Madhavanagar, Bangalore, was referred to the Labour Court, Bangalore, for adjudication.

And, whereas the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

Now, therefore, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said Award as above, in the **Mysore Gazette**.

[No. FCL 187 LLA 72.]

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,
Under Secretary to Government,
Food, Civil Supplies & Labour Department.

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